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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JUSTINA S. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061243

(San Diego County
Super. Ct. No. SJ12410)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section

366.26 hearing. Garry G. Haehnle, Judge. Petition denied. Request for stay denied.

Justina S. and R.M. contend the juvenile court erred when it set a hearing to select and implement a permanency plan under Welfare and Institutions Code section 366.26¹ for their daughter, S.M. The parents contend the evidence is insufficient to support the juvenile court's finding the return to Justina's custody would be detrimental to S.M. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2010, 16-month-old S.M. was adjudged a dependent of the juvenile court under section 300, subdivision (b). S.M.'s mother, Justina, often left her in the care of a friend who was a drug user without making arrangements for food, shelter, medical treatment and protection for the child. At the time the matter was referred to child protective services, Justina had been missing from four to six days. She was addicted to cocaine and other narcotics, and prostituted herself. Justina and S.M.'s father, R.M.,² had extensive histories of substance abuse and drug-related criminal convictions in San Diego, Los Angeles and Ventura Counties.

At the dispositional hearing, the juvenile court removed S.M. from the custody of her parents and ordered a plan of family reunification services. Justina's case plan included counseling and mental health services, parenting education and substance abuse treatment

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

² R.M. filed a notice of intent to file a writ petition. He joins with Justina's arguments in her writ petition and does not make any claims on his own behalf. We set forth facts concerning R.M. only when relevant to the issues raised in Justina's petition.

services and testing. The juvenile court ordered supervised visitation between Justina and S.M. to occur at least once a week.

At the six-month review hearing, the juvenile court found that Justina had made some progress with her court-ordered case plan and continued reunification services to her. Although her circumstances were not stable, Justina participated in a substance abuse treatment program with no reports of relapse.

In June 2011, at the 12-month review hearing, the Agency reported that Justina had almost completed her court-ordered case plan. However, Justina said she was not ready to have S.M. returned to her care because of her work and school schedules, and deficiencies in her current place of residence. The social worker criticized Justina for focusing on her schooling and other programs, and encouraged her to work to increase visitation with S.M. during the next six months. The juvenile court continued reunification services to the 18-month review date.

The contested 18-month review hearing was held on January 11, 2012. The juvenile court admitted the Agency's reports into evidence and heard Justina's testimony. The Agency reported that Justina completed her court-ordered case plan and was participating in in-home parenting classes. The service provider said Justina was cooperative and engaged during the classes but appeared hesitant to parent S.M. without step-by-step directions. Her visits with S.M. were unsupervised but inconsistent. Justina was reluctant to have S.M. stay overnight with her because she worried S.M. would cry for the caregiver. In addition, she was renting a room in a home with a pit bull dog and did not believe that the home was suitable for S.M.

In September, Justina moved in with R.M., whose visitation with S.M. continued to be supervised. The social worker advised Justina she was not to supervise his visits. In October, R.M. joined Justina at a visit with S.M. Justina believed R.M. had arranged with the caregiver to visit S.M. The caregiver acknowledged she had informed R.M. about the visit but had advised him to contact the social worker for specific guidelines because Justina's visit was unsupervised. After being advised by the social worker about R.M.'s noncompliance with services, Justina moved out of his home to her previous residence.

In January 2012, Justina's roommate moved, and Justina was going to be homeless. R.M.'s paternal grandfather offered her a place to live. Justina did not visit S.M. between October 31 and November 20, and cancelled visits on December 1 and 11. On December 18, against the caregiver's advice, Justina and S.M. played hide-and-seek at a large department store. The caregiver could not find them for 10 to 15 minutes. At a visit on January 3, 2012, the caregiver intervened to protect S.M., who started running in a parking lot while Justina was following her.

The social worker reported that Justina had demonstrated admirable consistency in maintaining her sobriety, complying with services and completing her school program. However, she did not maintain consistent visitation with S.M., and her circumstances were not sufficiently stable to place S.M. in her care. Justina demonstrated poor judgment when she allowed R.M. to have unsupervised contact with S.M. The social worker was concerned about Justina's ability to parent S.M. on a full-time basis. Justina did not appear to realize that caring for a young child required constant attention and supervision.

Justina testified that when she said she was not ready to care for S.M., she had been a full-time student without child care. She had completed her program as a medical administrative assistant and was looking for a job. Justina believed she was ready to care for S.M. She had maintained her sobriety for one year and four months, was attending Narcotics Anonymous meetings and participating in in-home services. She visited S.M. once a week. Justina explained that when she and S.M. were playing hide-and-seek in the department store, she never lost contact with S.M. The caregiver could not find them because Justina took S.M. to the restroom. During the incident in the parking lot, Justina called to S.M. to stop and went after her.

The juvenile court said it was very impressed by the way Justina had turned her life around. However, Justina did not demonstrate she could properly supervise S.M. She needed to become a mother to S.M., not a playmate. The court found that return to Justina's care would create a substantial risk of detriment to S.M. The court terminated reunification services to both parents and set a section 366.26 hearing to select and implement a permanent plan for S.M.

Justina and R.M. petition for review of the court's orders and request a stay of the section 366.26 hearing. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) They ask this court to vacate the order setting a section 366.26 hearing and order the juvenile court to return S.M. to Justina's custody under a plan of family maintenance services. This court issued an order to show cause and the Agency responded. The parties waived oral argument.

DISCUSSION

A

Legal Principles and Standard of Review

At the 18-month review hearing, the court must return the child to the physical custody of his or her parent unless the Agency proves, by a preponderance of the evidence, that return to the parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child (detriment finding). (§ 366.22, subd. (a); see *In re Marilyn H.* (1993) 5 Cal.4th 295, 308; *In re Jasmon O.* (1994) 8 Cal.4th 398, 420.)

The reviewing court must affirm an order setting a section 366.26 hearing if it is supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874; *Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

B

There Is Substantial Evidence to Support the Juvenile Court's Detriment Finding

Justina contends there is insufficient evidence to support the detriment finding. She points out that she completed her court-ordered case plan and maintained her sobriety, and argues that her anxiety about being a full-time parent will make her a more attentive parent

to S.M. Justina contends the incidents during visitation do not reasonably support the conclusion that S.M.'s safety would be at risk in her care.

Although Justina made very good progress on the parts of the court-ordered case plan that benefitted her personal development, the record shows that she gave little emphasis to the part of the case plan that focused on S.M. At the 12-month review hearing in June 2011, the social worker advised Justina that if she devoted a substantial amount of time and energy toward visiting S.M., there was a substantial likelihood she would be returned to her care at the 18-month review date. Yet Justina's visits with S.M. remained inconsistent. She did not visit S.M. for three weeks in November, missed two other visits in early December and did not seek to spend more time with her daughter. Justina's performance does not indicate she was focused on reunifying with S.M.

The record shows that Justina expressed concerns about being responsible for S.M. and exercised poor judgment on at least two occasions regarding matters that impacted S.M.'s safety. The social worker observed that Justina appeared to be conflicted about being a full-time parent. In view of her history of leaving S.M. with unsuitable caregivers, Justina's ambivalence about full-time parenting placed her at risk of abdicating her parental responsibilities when she did not feel up to the task. Moreover, she did not yet have a job or a stable residence, factors that had severely impacted her ability to care for S.M. in the past.

The juvenile court commended Justina for maintaining her sobriety and the positive changes she had made in her life. However, at a review hearing, the focus is on the child's well-being, rather than on the initial grounds for juvenile court intervention. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) We conclude that there is sufficient evidence to

support the court's finding return to Justina's custody would create a substantial risk of detriment to S.M.'s safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).)

DISPOSITION

The petition is denied. The request for stay is denied.

HALLER, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.